IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI.APPLICATION NO. 311 OF 2006
IN
CRI.APPEAL NO. 1042 OF 2005

Amarsingh Kalusingh Vishwakarma ..Applicant

Vs.

The State of Maharashtra ..Respondent

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Mr.Nitin Sejpal & Pooja Bhojane Advocates for Applicant
Smt.V.R.Bhosale, A.P.P. for State

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CORAM: D.G.DESHPANDE AND SMT.V.K.TAHILRAMANI,JJ.

DATE : APRIL 26,2006

ORAL ORDER (SMT.V.K.TAHILRAMANI,J.):

1. Heard the learned advocate for the applicant i.e. original accused no.1 and learned A.P.P. for State.

2. The applicant i.e. original accused no.1 has been convicted under Section 302 read with Section 34 of IPC.

3. It is the prosecution case that applicant along with other accused caused the death of Lalmani Yadav. Lalmani Yadav came to be assaulted by ‘poker’ and by fist blows. There are three eye witnesses i.e. P.W.1 Girjiashankar Baliram Mourya, P.W.3 Amarnath Ramnaresh Yadav and P.W.4 Ratiram Sunad Yadav. Five stab injuries were found on the right side of chest of Lalmani and three stab injuries were found on the left side of the chest. As per the Doctor, the injuries were possible by poker (Article No.1).

4. The learned advocate for the applicant has submitted that the applicant had not actually assaulted Lalmani with poker but the other accused had assaulted Lalmani with poker and the role attributed to the applicant is that he had only held Lalmani when he was being assaulted by the other accused.

5. Even assuming that the present applicant had not assaulted Lalmani with poker but he had only held Lalmani while other accused assaulted him, he can be clearly said to have shared the common intention of the other accused. It is seen that

there are eight stab injuries on the chest of the deceased, if the petitioner held Lalmani for such a long period of time that the other accused was able to give eight stab blows to Lalmani on his chest from this it is clear that applicant shared the common intention of the other accused. The deceased was brutally stabbed eight times in the chest. The co-acused would not have been able to inflict the said blows without active help of the applicant in holding Lalmani while the co-accused inflicted the blows with poker. In this view of the matter, we do not think that this is a fit case to grant bail.

6. Application is rejected.

[D.G.DESHPANDE, J.]

[SMT.V.K.TAHILRAMANI,J.]